

SC Constitutional Amendment Section 24 S.C. Victims' Bill of Rights & Victim and Witness Service Statutes



SC CRIME VICTIMS' COUNCIL
EX DIRECTOR
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Victim Service Provider (VSP)

S.C. Code Section 16-3-1400. Definition.

For purposes of this article:

(1) "Victim Service Provider" means a person:

- (a) Who is employed by a local government or state agency and whose job duties involve providing victim assistance as mandated by South Carolina law or
- (b) Whose job duties involve providing direct services to victims and who is employed by an organization that is incorporated in South Carolina, holds a certificate of authority in South Carolina, or is registered as a charitable organization in South Carolina, and the organization's mission is victim assistance or advocacy and the organization is privately funded or receives funds from federal, state, or local governments to provide services to victims.

Victim Service Provider does not include a municipal court judge, magistrates court judge, circuit court judge, special circuit court judge, or family court judge.

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Victim Service Provider (VSP) and Notifier

- **Victim Service Providers (VSP)** and must complete **3 hours** of training in the area of the SC Victims' Bill of Rights and Victim/Witness Statutes. These 3 hours are part of the annual 12 hours required by law (or 15 hours for the 1st time VSP certification).
- **Notifiers (Summary Court and Detention Centers)** are only required to complete **2 hours** of training in the area of the SC Victims' Bill of Rights and Victim/Witness Statutes.

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What is a crime victim?

- **S.C. Code Section 16-3-1510. Definitions.**
- An individual who suffers
 - Direct or threatened
 - Physical, psychological or financial harm
 - As a result of the commission or attempted commission of a crime
 - Victim also includes
 - victim's *spouse, parent or child*
 - lawful representative a victim who
 - deceased
 - a minor
 - incompetent
 - physically or psychologically incapacitated



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Who is not a crime victim?

- S.C. Code Section 16-3-1510. Definitions.**
Victim **DOES NOT INCLUDE** any individual
- who is the *subject of an investigation*
 - who is *charged with the offense* in question
 - who has been *convicted, pled guilty or nolo contendere* to the offense in question
 - who is the spouse, parent, child or lawful representative acting on *behalf of the suspect*
 - who was *imprisoned or engaged in an illegal act* at the time of the offense

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HISTORY

- **Act 141 and Act 343**
- Act 141 signed by the Governor on June 9, 1997
 - Sexual Assault Kits paid by SOVA
 - Victim/Witness laws (Law Enforcement, Courts, Prosecution, Post Conviction Agencies)
 - Fines/Fees Assessments
- Act 343 signed by the Governor on June 8, 1998
 - Definition of Crime Victim
 - Further refinement of responsibilities for Law Enforcement, Courts, Prosecution and Post Conviction Agencies
 - Fines/Fees

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Act 259

- 1998
- Added Section 24, Victims' Bill of Rights to the South Carolina Constitution
- 12 Basic Rights for Crime Victims

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S.C. Victims' Bill of Rights



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S.C. Constitution, Article I

SECTION 24. Victims' Bill of Rights.

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, **victims of crime have the right to:**

(1) be **treated** with fairness, respect, and dignity, and to be **free from** intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and **informed of** the victim's constitutional rights, provided by statute;

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(2) be **reasonably informed** when the accused or convicted person is arrested, released from custody, or has escaped;

(3) be informed of and present at any criminal proceedings which are **dispositive** of the charges where the defendant has the right to be present;

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(4) be **reasonably informed** of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail;

(5) **be heard** at any proceeding involving a post-arrest release decision, a plea, or sentencing;

(6) be **reasonably protected** from the accused or persons acting on his behalf throughout the criminal justice process;

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(7) **confer with the prosecution, after** the crime against the victim has been charged, **before** the trial or before any disposition and informed of the disposition;

(8) have **reasonable access** after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial;

(9) **receive prompt and full restitution** from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders;

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(10) be **informed of any proceeding** when any **post-conviction** action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;

(11) a **reasonable disposition** and **prompt and final conclusion** of the case;

(12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

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(B) **Nothing in this section creates a civil cause of action** on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a **writ of mandamus**, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a willful failure to comply with a writ of mandamus is punishable as contempt.

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Writ of Mandamus

- Order by superior court commanding the performance of a specified act or duty

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C) For purposes of this section:

(1) A victim's exercise of any right granted by this section is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(2) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term "victim" also includes the person's spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.

(3) The General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(4) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the General Assembly or retained by victims. (1998 Act No. 259.)

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S.C. Code Section 16
Article 15
Victim and Witness Service



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16-3-1515 Victim Responsibilities
 16-3-1520 Free Incident Report; Law Enforcement advocate responsibilities; status and progress of case to victim by law enforcement
16-3-1525 Arrest or detention of person accused of committing offense; notification to victims; protection of witnesses; notification of bond proceedings; juvenile detention hearings.

22-5-510 Bailing persons; bond hearing; information to be provided to court; contempt
 16-3-1530
16-3-1535 Summary Court's Duty to Notify victim of victims' rights
 16-3-1540 DJJ to confer with victims before taking action
 16-3-1545 Juvenile cases; notification to victims of right to submit victim impact statements. (Duty to notify, prosecuting agency)
 16-3-1550 Restriction of employers of victims and witnesses; protection of rights of victims and witnesses.
 16-3-1555 Expert Witness fees; distribution, maintenance and use of victim impact statements (VIS).
 16-3-1560 Notification to victim of post-conviction proceedings affecting probation, parole, or release, and of victim's right to attend. (DOC, 3P, Attorney General)
 16-3-1565 No cause of action against public employees or agencies under this article.

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SC Code Section 16-3-1515

Victim or witness wishing to receive services under article to supply certain information; requirements for receiving restitution; victims wishing to be present in court to notify prosecuting agency or summary court judge; victim impact statement

(A) **A victim or prosecution witness** who wishes to exercise his rights under this article or receive services under this article, or both, **must provide** a law enforcement agency, a prosecuting agency, a summary court judge, the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, as appropriate, **his legal name, current mailing address, and current telephone number** upon which the agency must rely in the discharge of its duties under this article

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S.C. Code Section 16-3-1515 (continued)

(B) **A victim who wishes to receive restitution must**, within appropriate time limits set by the prosecuting agency or summary court judge, **provide the prosecuting agency or summary court judge with an itemized list** which includes the values of property stolen, damaged, or destroyed; property recovered; medical expenses or counseling expenses, or both; income lost as a result of the offense; out-of-pocket expenses incurred as a result of the offense; any other financial losses that may have been incurred; an itemization of financial recovery from insurance, the offense victim's compensation fund, or other sources. The prosecuting agency, court, or both, may require documentation of all claims. This information may be included in a written victim impact statement.

As of January 1, 2011, monetary cap for restitution is \$7,500

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Municipal court, civil jurisdiction

"Section 14-25-65. If a municipal judge finds a party guilty of violating a municipal ordinance or a state law within the jurisdiction of the court, he may impose a fine of not more than five hundred dollars or imprisonment for thirty days, or both. In addition, a municipal judge may order restitution in an amount not to exceed the civil jurisdictional amount of magistrates court provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A municipal judge may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay."

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Magistrates court, civil jurisdiction

Section 22-3-550(A) of the 1976 Code is amended to read:
 "(A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution in **an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.**
 A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay."

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CIVIL JURISDICTION

- SECTION 22-3-10. Concurrent civil jurisdiction.

Magistrates have concurrent civil jurisdiction in the following cases:

- (1) in actions arising on contracts for the recovery of money only, if the sum claimed does not **exceed seven thousand five hundred dollars;**
- (2) in actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed seven thousand five hundred dollars;

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S.C. Code Section 16-3-1515

(C) A victim who wishes to **be present for any plea, trial,** or sentencing must notify the prosecuting agency or summary court judge of his desire to be present. This notification may be included in a written victim impact statement.

(D) A victim who wishes to submit a **written victim impact statement** must provide it to the prosecuting agency or summary court judge within appropriate time limits set by the prosecuting agency or summary court judge.

(E) A victim who wishes to make an **oral victim impact statement** to the court at sentencing must notify the prosecuting agency or summary court judge of this desire in advance of the sentencing.

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SECTION 16-3-1520. Victim entitled to copy of initial incident report; assistance in applying for victim's compensation benefits; information on progress of case.

(A) A law enforcement agency must provide a victim, free of charge, a copy of the initial incident report of his case, and a document which:

- (1) describes the constitutional rights the State grants victims in criminal cases;
- (2) describes the responsibilities of victims in exercising these rights;
- (3) lists local victim assistance and social service providers;
- (4) provides information on eligibility and application for victim's compensation benefits; and
- (5) provides information about the rights of victims and witnesses who are harassed or threatened.

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S.C. Code Section 16-3-1520 (continued)

(B) A law enforcement agency, within a reasonable time of initial contact, must assist each eligible victim in applying for victim's compensation benefits and other available financial, social service, and counseling assistance.

(C) Law enforcement victim advocates, upon request, may intervene with, and seek special consideration from, creditors of a victim who is temporarily unable to continue payments as a result of an offense and with the victim's employer, landlord, school, and other parties as considered appropriate through the investigative process.

(D) A law enforcement agency, upon request, must make a reasonable attempt to inform a victim of the status and progress of his case from initial incident through:

- (1) disposition in summary court;
- (2) the referral of a juvenile offender to the Department of Juvenile Justice; or
- (3) transmittal of a general sessions warrant to the prosecuting agency.

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SECTION 16-3-1525. Arrest or detention of person accused of committing offense; notification to victims; protection of witnesses; notification of bond proceedings; juvenile detention hearings.

(A) A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, must make a reasonable attempt to notify each victim of the arrest or detention and of the appropriate bond or other pretrial release hearing or procedure.

(B) A law enforcement agency, before releasing to his parent or guardian a juvenile offender accused of committing an offense involving one or more victims, must make a reasonable effort to inform each victim of the release.

(C) A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, must provide to the jail, prison, or detention or holding facility, including a mental health facility, having physical custody of the defendant, the name, mailing address, and telephone number of each victim. If the person is transferred to another facility, this information immediately must be transmitted to the receiving facility. The names, addresses, and telephone numbers of victims and witnesses contained in the files of a jail, prison, or detention or holding facility, including a mental health facility, are confidential and must not be disclosed directly or indirectly, except as necessary to provide notification.

(D) A law enforcement agency, after detaining a juvenile accused of committing an offense involving one or more victims, must provide to the Department of Juvenile Justice the name, address, and telephone number of each victim. The law enforcement officer detaining the juvenile, regardless of where the juvenile is physically detained, retains the responsibility of notifying the victims of the pretrial, bond, and detention hearings, or pretrial releases that are not delegated pursuant to this article.

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S.C. Code Section 16-3-1525 (continued)

(E) Upon detention of a person, other than a juvenile, accused of committing an offense not under the jurisdiction of a summary court, and involving one or more victims, the arresting law enforcement agency must provide, in writing, to the prosecuting agency before a bond or release hearing before a circuit or family court judge the name, address, and telephone number of each victim.

(F) Upon detention of a person, other than a juvenile, accused of committing an offense involving one or more victims and which is triable in summary court or an offense involving one or more victims for which a preliminary hearing may be held, the **arresting law enforcement agency must provide, in writing, to the summary court the name, mailing address, and telephone number of each victim.**

(G) A law enforcement agency must provide any measures necessary to protect the victims and witnesses, including transportation to and from court and physical protection in the courthouse.

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(H) In cases in which a defendant has bond set by a summary court judge:

- (1) the arresting agency of the defendant **reasonably must attempt** to notify each victim of each case for which bond is being determined of his right to attend the bond hearing and make recommendations to the presiding judge. **This notification must be made sufficiently in advance** to allow the victim to exercise his rights contained in this article.
- (2) **the summary court judge**, before proceeding with a bond hearing in a case involving a victim, must ask the representative of the facility having custody of the defendant to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend the proceeding. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice; and
- (3) **the summary court judge must impose bond conditions** which are sufficient to protect a victim from harassment or intimidation by the defendant or persons acting on the defendant's behalf.

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S.C. Code Section 16-3-1525 (continued)

- (I) (1) (2) and (3) Cases in which a defendant has a bond proceeding before a circuit court judge.
- (J) (1) (2) and (3) Cases in which a juvenile has a detention hearing before a family court judge.

(K) Upon scheduling a preliminary hearing in a case involving a victim, the **summary court judge reasonably must attempt to notify each victim** of each case for which the defendant has a hearing of his right to attend.

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**S. C. Code Section 16-3-1525
(continued)**

- (L) Diversion programs – notify victims prior to release from those programs
- (M) Court ordered/ mandatory mental evaluations – facility must notify victims prior to defendant's release
- (N) (1) Notification of a victim pursuant to the provisions of this section may be by electronic or other automated communication or recording. However, after three unsuccessful attempts to reach the victim in cases involving *criminal domestic violence, criminal sexual conduct, and stalking and harassment*, and those cases when physical injury has occurred as a result of a physical or sexual assault and in cases where a pattern of conduct exists by the offender or suspected offender that would cause a reasonable person to believe he may be at risk of physical assault *the appropriate agency or diversion program shall attempt to make contact with the victim*, or the victim's guardian, *upon the judicial or administrative release or the escape of the offender*.
- (2) For purposes of this section, "pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.

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S.C. Code Section 16-3-1530
(A) (1) (2) (3) (4)
and (B)

Department or agencies having custody of an accused person must notify the victim before the release, or upon escape or transfer to another facility. (Applies to adults and juveniles)

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SECTION 16-3-1530. Notification of victim of release, escape or transfer of accused.

(A) Notwithstanding another provision of law, except the provisions contained in Section 16-3-1525(D) relating to juvenile detention:

- (1) *notwithstanding the provisions of Section 22-5-510*, a department or agency having custody or custodial supervision of a person accused, convicted, or adjudicated guilty of committing an offense involving one or more victims *reasonably must attempt to notify each victim*, upon request, before the *release* of the person;
- (2) a department or agency having custody or custodial supervision of a person accused of committing an offense involving one or more victims *reasonably must attempt to notify each victim*, upon request, of an *escape* by the person;
- (3) a department or agency having custody of a person accused, convicted, or adjudicated guilty of committing an offense involving one or more victims must inform each victim, upon request, before any *nonintradepartmental transfer of the person to a less secure facility* or to a diversionary program including, but not limited to, a drug court program or a mental health court. The provisions of this item do not apply to transfers to other law enforcement agencies and transfers to other nonlaw enforcement locations if the person remains under security supervision. All victims, *upon request* must be notified of *intradepartmental transfers* after the transfer occurs; and
- (4) a department or agency having custody or custodial supervision of a person convicted or adjudicated guilty of committing an offense involving one or more victims must reasonably attempt to notify each victim and prosecution witness, upon request, of an escape by the person.

(B) Notification of a victim pursuant to the provisions of this section may not be only by electronic or other automated communication or recording except in the case of an intradepartmental transfer.

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BAIL AND RECOGNIZANCE; ARREST AND COMMITMENT OF WITNESSES

SECTION 22-5-510. Bailing persons; bond hearing; information to be provided to court; contempt.

(A) Magistrates may admit to bail a person charged with an offense, the punishment of which is not death or imprisonment for life; provided, however, with respect to violent offenses as defined by the General Assembly pursuant to Section 15, Article I of the Constitution of South Carolina, magistrates may deny bail giving due weight to the evidence and to the nature and circumstances of the event, including, but not limited to, any charges pending against the person requesting bail. "Violent offenses" as used in this section means the offenses contained in Section 16-1-60. If a person under lawful arrest on a charge not bailable is brought before a magistrate, the magistrate shall commit the person to jail. If the offense charged is bailable, the magistrate shall take recognizance with sufficient surety, if it is offered, in default whereof the person must be incarcerated.

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S.C. Code Section 22-5-510 (continued)

(B) A person charged with a bailable offense **must have a bond hearing within twenty-four hours of his arrest** and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility.

(C) Prior to or at the time of the bond hearing, the law enforcement officer, local detention facility officer, or local jail officer, as applicable, attending the hearing shall provide the court with the following information if available:

- (1) the person's criminal record;
- (2) any charges pending against the person;
- (3) all incident reports generated as a result of the offense charged; and
- (4) any other information that will assist the court in determining bail.

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S.C. Code Section 22-5-510 (continued)

(D) The law enforcement officer, local detention facility officer, or local jail officer, as applicable, shall inform the court if any of the information required in subsection (C) is not available at the time of the bond hearing and the reason the information is not available. Failure on the part of the law enforcement officer, local detention facility officer, or local jail officer, as applicable, to provide the court with the information required in subsection (C) does not constitute grounds for the postponement or delay of the person's bond hearing.

(E) A court hearing this matter has contempt powers to enforce these provisions.

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S.C. Code SECTION 16-3-1535.

Summary court's duty to notify victim of victim's rights; form for victim impact statement.

(A) The summary court, upon retaining jurisdiction of an offense involving one or more victims, reasonably must attempt to notify each victim of his right to:

- (1) be present and participate in all hearings;
- (2) be represented by counsel;
- (3) pursue civil remedies; and
- (4) submit an oral or written victim impact statement, or both, for consideration by the summary court judge at the disposition proceeding.

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S.C. Code Section 16-3-1535 (continued)

(B) The summary court must provide to each victim who wishes to make a written victim impact statement a form that solicits pertinent information regarding the offense, including:

- (1) the victim's personal information and supplementary contact information;
- (2) an itemized list of the victim's economic loss and recovery from any insurance policy or any other source;
- (3) details of physical or psychological injuries, or both, including their seriousness and permanence;
- (4) identification of psychological services requested or obtained by the victim;
- (5) a description of any changes in the victim's personal welfare or family relationships; and
- (6) any other information the victim believes to be important and pertinent.

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(C) The summary court judge must inform a victim of the applicable procedures and practices of the court.

(D) The summary court judge reasonably must attempt to notify each victim related to the case of each hearing, trial, or other proceeding.

(E) A law enforcement agency and the summary court must return to a victim personal property recovered or taken as evidence as expeditiously as possible, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics for use as evidence when possible.

(F) The summary court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant.

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(G) In cases in which the **sentence is more than ninety days, the summary court judge must forward, as appropriate and within fifteen days, a copy of each victim's impact statement or the name, mailing address, and telephone number of each victim, or both**, to the **Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, the Department of Juvenile Justice, and a diversion program**. The names, addresses, and telephone numbers of victims and prosecution witnesses contained in the records of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice are confidential and must not be disclosed directly or indirectly, except by order of a court of competent jurisdiction or as necessary to provide notifications, or services, or both, between these agencies, these agencies and the prosecuting agency, or these agencies and the Attorney General.

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S.C. Code SECTION 16-3-1540

Department of Juvenile Justice to confer with victims before taking certain actions.

S.C. Code SECTION 16-3-1545

Juvenile cases; notification to victims of right to submit victim impact statement for disposition proceeding; form of statement; other required information to victims. (This section specifies many of the prosecuting agency's responsibilities to crime victims. It also covers the timely manner of returning personal property to the victim that was seized as evidence)

S.C. Code SECTION 16-3-1550

Restriction on employers of victims and witnesses; protection of victims and witnesses.

(C) For proceedings in the circuit or family court, the law enforcement and prosecuting agency must make reasonable efforts to provide victims and prosecution witnesses waiting areas separate from those used by the defendant and defense witnesses.

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S.C. Code SECTION 16-3-1555

Expert witness fees; distribution, maintenance and use of victim's impact statements. (Also includes prosecuting agency's duty to provide victim information to post conviction agencies, i.e. DOC, 3P, DJJ, Board of Juvenile Parole and the Attorney General)

S.C. Code SECTION 16-3-1560.

Notification to victim of post-conviction proceedings affecting probation, parole, or release and of victim's right to attend. (Victim notification duties for DOC, 3P, DJJ, Board of Juvenile Parole and Attorney General)

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S.C. Code Section 16-3-1565

- (A) Nothing in this article creates a cause of action on behalf of a person against a public employee, public agency, the State, or an agency responsible for the enforcement of rights and provision of services set forth in this article.
- (B) A sentence must not be invalidated because of failure to comply with the provisions of services set forth in this article.
- (C) This article must not be construed to create a cause of action for monetary damages.

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Resources



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Ombudsman

Mailing Address:
1205 Pendleton Street
Columbia, SC 29201

Physical Address:
Wade Hampton Building, 1st Floor
Statehouse Grounds
Columbia, SC

Main Number:
1(803) 734-0357
1(888) 238-0697, victims only please

Staff

Debbie Curtis	Director
Lena Grant (CVO)	Program Assistant
Paul Williams (CVO)	Program Assistant
Leslie Sims (OVSEC)	Program Assistant

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SOVA

www.govoepp.state.sc.us

803 734 1900

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SCCADVASA

SC Coalition Against Domestic Violence & Sexual Assault

WWW.SCCADVASA.Org

803 256 2900

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SCCVC

South Carolina Crime Victims' Council



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